

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17 th Street, Suite 1300 Denver, Colorado 80202		
ISAAC HOLLAND, Complainant, vs. ERMA J. VERDAHL, JACK CHAFFEE, and ROBERT DENTON Respondents.		▲ COURT USE ONLY ▲ CASE NUMBER: OS 20070007
AGECNY DECISION		

This matter is before the Office of Administrative Courts on the complaint of Isaac Holland ("Complainant") against Erma Verhahl, Jack Chaffee, and Robert Denton ("Respondents"). The complaint was filed with the Colorado Secretary of State ("Secretary") on June 4, 2007. On June 7, 2007, the Secretary referred the complaint to the Office of Administrative Courts as required by Colo. Const. art. XXVIII, § 9(2)(a). The case was referred to an Administrative Law Judge ("ALJ") and a merits hearing was scheduled on June 22, 2007 in Denver, Colorado.

On June 15, 2007, Donald L. McBee, Respondents' attorney, requested a continuance of the June 22 hearing. The ALJ granted Respondents request. The hearing was rescheduled on August 31, 2007. On August 23, 2007, Respondents filed a motion to participate at the August 31 hearing by telephone from Delta County. The ALJ granted Respondents request. On August 31, 2007, Complainant appeared in person at the OAC for the hearing. Respondents and their counsel, Mr. McBee, appeared by telephone. The August 31 hearing was held before ALJ Michelle A. Norcross in Denver, Colorado. At hearing, the ALJ admitted Complainant's exhibits 1 through 24 into evidence. The proceedings were digitally recorded in courtroom 2.

Parties' Positions

Complainant: Complainant alleges that Respondents were members of the recall committee established during a December 2006 recall election for the Mayor of the Town of Orchard in Delta County. Complainant argues that Respondents violated §§ 1-45-108, C.R.S. by not filing any reports for campaign contributions or how they spent money in connection with their efforts during the December 12, 2006 recall election.

Respondents: Respondents assert that Complainant's complaint is time barred by the 180-day time limit in Colo. Const. art. XXVIII, § 9(2)(a) and that the complaint should be dismissed. Time limits aside, Respondents assert that they did not make or

receive any contributions or make any expenditures as members of the recall committee; Respondents were only volunteers in the election campaign. Additionally, Respondents contend that Complainant should be estopped from bring this complaint because he, as the municipal clerk of the Town of Orchard, failed to notify Respondents that he believed they failed to file a report in an election and notify Respondents that a complaint had been filed against them, which are requirements of his duties as municipal clerk under § 1-45-112, C.R.S.

FINDINGS OF FACT

1. On December 12, 2006, the Town of Orchard City in Delta County held a recall election to recall the Mayor of Orchard City, Thomas Huerkamp.
2. In November 2006 four separate print ads were placed in the local newspaper, the Delta County Independent, urging voters to recall Mayor Huerkamp. The ads were paid for by The Committee to Recall Thomas Huerkamp. The ads ran on November 15, 22 and 29, 2006. The cost of the four ads was \$1,082.25.
- 3.

DISCUSSION

“Political committee” means, “any person, other than a natural person, or any group of two or more persons, including natural persons that have accepted or made contributions¹ or expenditures² in excess of \$200 to support or oppose the nomination or election of one or more candidates.” Colo. Const. art. XXVIII, § (2)(12)(a). The group called “Committee to Elect Responsible Water Board Directors” became a political committee on April 27, 2006, when they accepted contributions and made expenditures in excess of \$200 to support the nominations of Mr. Matchett, Mr. Lucas, and Mr. Peterson.

¹ “Contribution” is defined as (I) the payment, loan, pledge, gift, or advance of money, or guarantee of loan made to any candidate committee, issue committee, political committee, small donor committee, or political party; (II) any payment made to a third party for the benefit of any candidate committee, issue committee, political committee, small donor committee, or political party; (III) the fair market value of any gift or loan of property made to any candidate, issue, political, small donor committee or political party; or (IV) anything of value given, directly or indirectly, to a candidate for the purpose of promoting the candidate’s nomination, retention, recall or election. Colo. Const. art. XXVIII, § 2(5)(a) (I) – (IV). “Contribution” does not include services provided without compensation by individuals volunteering their time on behalf of a candidate or political committee. § 2(5)(b).

² “Expenditure” means any purchase, payment distribution, loan, advance, deposit, or gift of money by any person for the purpose of expressly advocating the election or defeat of a candidate. An expenditure is made when the actual spending occurs or when there is a contractual agreement requiring such spending and the amount is determined. Colo. Const. art. XXVIII, § 2(8)(a).

“Candidate committee” means, “a person, including the candidate, or person with the common purpose of receiving contributions or making expenditures under the authority of the candidate. A contribution to a candidate shall be deemed a contribution to a candidate’s committee.” Colo. Const. art. XXVIII, § 2(3). The group’s contribution to Matchett, Lucas and Peterson on April 27, 2006 is deemed a contribution to their candidate committee’s. There is insufficient evidence to establish that the business cards printed by Mr. Lucas were reportable contributions.

“Electioneering communication” includes any communication directly mailed to personal residences that: (1) unambiguously refers to any candidate; (2) is printed, mailed or distributed within thirty days before a primary election or sixty days before a general election; and (3) is distributed or mailed to an audience that includes members of the electorate for such public office. Colo. Const. art. XXVIII, § 2(7)(a). The April 27 flyer was not mailed or distributed within thirty days of a primary election or sixty days before a general election. The May 2, 2006 election was a special district election. Therefore, the April 27 flyer does not constitute an electioneering communication.

Committee Registration and Reporting Requirements

Under § 1-45-108(3), C.R.S., all political and candidate committees must register with the appropriate officer before accepting or making any contributions. In this case, the appropriate officer is the clerk and recorder of the county in which the district court having jurisdiction over the special district pursuant to section 32-1-303, C.R.S., is located. § 1-45-109(1), C.R.S. Such registrations must include the organization’s full name, the name of the committee’s registered agent, the street address and telephone number for the principal place of operations, all affiliated candidates and committees, and the purpose or nature of the committee. The candidate Respondents and the Respondent committee had a duty to register before making and accepting the April 27 contribution(s).

All political and candidate committees must also report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made, and obligations entered into by the committee. Section 1-45-108(1)(a)(I), C.R.S. Reports that are required to be filed with the county clerk and recorder are required to be filed on the twenty-first day and on the Friday before and thirty days after the major election in elections years. § 1-45-108(2)(a)(II), C.R.S.; 8 CCR 1505-6 § 5.8. “Election year” means every even numbered year for political committees; and “major election” means the election that elects a person to the public office sought by the candidate. § 1-45-108(2)(a)(III), C.R.S.

In the instant case, the Committee to Elect Responsible Water Board Directors did not become a political committee until April 27, 2006, when it accepted its first contribution and made its first expenditure. Likewise, the candidates did not receive a reportable contribution until April 27, 2006. Pursuant to § 1-45-108(2)(a)(II), the committees’ first reports were due on April 28, 2006, the Friday before the May 2, 2006

election. The committees' final reports were due on Thursday, June 1, 2006, the thirtieth day after the election.

Complaint Filing Requirements

It is undisputed that the group did not register as a political committee prior to April 27, 2006. It also did not file reports of contributions and expenditures on April 28 or June 1, 2006. The candidates also did not register candidate committees or file reports of contributions and expenditures. Respondents' failure to register candidate and political committees are violations of the FCPA as are their failures to file reports of contributions and expenditures. However, all violations occurring before May 6, 2006 are time barred and must be dismissed.

Under Colo. Const. art. XXVIII, § 9(2)(a), any person who believes that a violation of sections 3, 4, 5, 6, 7, or 9(1)(e) of Article XXVIII or of sections 1-45-108, 1-45-114, 1-45-115, or 1-45-117, C.R.S. has occurred must file a written complaint with the Secretary no later than one hundred eighty (180) days after the date of the alleged violation. Complainant filed his complaints against Respondents on November 2, 2006. One hundred and eighty days prior to November 2, 2006 is May 6, 2006. The only violations occurring after May 6, 2006, are Respondents' failures to file their final reports of contributions and expenditures on June 1, 2006.

The June 1, 2006 reports should have included the balance of the funds at the beginning of the reporting period, the total of contributions received, the total of expenditures made during the reporting period, and the name of the financial institution used by the committees. § 1-45-108(2)(b). In accordance with § 1-45-108(2)(e), C.R.S., the reporting period for all reports to be filed with the county clerk and recorder close five calendar days prior to the effective date of filing. The reporting period for the June 1, 2006 report is: April 29 - May 27, 2006. During this period, the committees made no expenditures and had no balance of funds to report; however, they had received aggregate contributions, which were not reported and should have been.

CONCLUSIONS OF LAW

1. Pursuant to Colo. Const. art. XXVIII, § 9(2)(a), the ALJ has jurisdiction to conduct a hearing in this matter.
2. If the ALJ determines that a violation of the FCPA has occurred, the ALJ's decision must include the appropriate order, sanction or relief authorized by Article XXVIII of the Colorado Constitution.
3. Colo. Const. art. XXVIII, § 9(1)(f) provides that the hearing is conducted in accordance with the Colorado Administrative Procedure Act (APA), § 24-4-101, *et seq.*, C.R.S. Under the APA, the proponent of an order has the burden of proof. § 24-4-105(7), C.R.S. In this instance, Complainant is the proponent of an order seeking civil

penalties against Respondents for violations of the FCPA. Accordingly, Complainant has the burden of proof.

4. The ALJ concludes that Complainant has not established by a preponderance of the evidence that Respondents June Matchett and John Aitken had any involvement in any activities alleged in his November 2, 2006 complaints or that these Respondents violated any of Colorado's campaign finance laws. The complaints filed against Respondents June Matchett and John Aitken are dismissed.

5. The ALJ concludes that Complainant has not established by a preponderance of the evidence that Respondent Trisha Peterson violated any of Colorado's campaign finance laws. Mrs. Peterson's involvement in the April 27, 2006 event was purely as a volunteer. The complaint filed against Respondent Trisha Peterson is dismissed.

6. The ALJ concludes that Complainant has established by a preponderance of the evidence that candidate Respondents Jim Matchett, Tony Lucas and Gary Peterson violated the FCPA by failing to register as candidate committees before April 27, 2006, when they first received their first reportable contributions. However, these violations are dismissed because they are time barred.

7. The ALJ concludes that Complainant has established by a preponderance of the evidence that the Respondent committee violated the FCPA by failing to register as a political committee before April 27, 2006, when it received contributions and made expenditures in excess of \$200 to support three Water Board candidates. However, this violation is dismissed because it is time barred.

8. The ALJ concludes that Complainant has established by a preponderance of the evidence that candidate Respondents Jim Matchett, Tony Lucas and Gary Peterson violated the FCPA by failing to file reports of contributions and expenditures on April 28, 2006 and June 1, 2006. However the violations related to the filing of the April 28 reports are dismissed because they are time barred.

9. The ALJ concludes that Complainant has established by a preponderance of the evidence that the Respondent committee violated the FCPA by failing to file reports of contributions and expenditures on April 28, 2006 and June 1, 2006. However the violation related to the filing of the April 28 report is dismissed because it is time barred.

AGENCY DECISION

It is the Agency Decision of the ALJ that the Respondent committee and the candidate Respondents did not comply with the requirement to file their final reports of contributions and expenditures on June 1, 2006. Once a violation of the FCPA has been established, the ALJ must include in the Agency Decision the appropriate order, sanction, or relief authorized by Article XXVIII.

One sanction authorized for a failure to file pursuant to § 1-45-108, C.R.S. is a \$50 per day fine for each day the required filing was not made. See Colo. Const. art. XXVIII, § 10(2)(a). In accordance with § 10(2)(a), “[t]he appropriate officer shall impose a penalty of fifty dollars per day for each day that a statement or other information required to be filed pursuant to . . . sections 1-45-108, 1-45-109 or 1-45-110, C.R.S., or any successor sections, is not filed by the close of business on the day due.” The ALJ is not “the appropriate officer” for purposes of this section and is therefore not required to impose a \$50 per day sanction. Moreover, the Colorado Constitution permits the ALJ to set aside or reduce a penalty upon a showing of good cause. Colo. Const. art. XXVIII, § 10(2)(b)(I).

In this case, a strict application of the \$50 per day sanction in § 10(2)(a) would result in individual fines exceeding \$23,000. Under the circumstances of this case, the ALJ finds such a penalty excessive. The people of the state of Colorado passed Amendment 27 in an effort to limit large campaign contributions to political candidates; eliminate the potential for corruption and the appearance of corruption; reduce the influence of election outcomes by wealthy individuals, corporations and special interest groups; and keep the cost of elections down allowing qualified citizens to run for political office. To this end, Colorado’s election laws are designed to limit campaign contributions, encourage voluntary spending limits, provide for full and timely disclosure of campaign contributions as well as independent expenditures and electioneering communications. See Article XXVIII, § 1.

Although the ALJ finds that the Respondent candidates and the Respondent committee violated the letter of law, it is difficult to imagine that this is the type of campaign offense that voters were concerned about when they passed Amendment 27. Indeed, a strict application of the \$50-per-day fine in this case could bring about an opposite effect. That is, discouraging qualified citizens from running for political office and neighborhood groups gathering together to volunteer their time in support candidates of their choosing. Accordingly, the ALJ is imposing only a minimum penalty on each Respondent candidate and the Respondent committee. Each candidate Respondent is assessed a fine in the amount of \$50. And the Respondent committee is assessed a fine in the amount of \$50. The penalties are to be paid in accordance with the requirements of the Secretary of State’s rule, policies and procedures.

This decision is subject to review with the Colorado Court of Appeals, pursuant to § 24-4-106(11), C.R.S. and Colo. Const. art. XXVIII, § 9(2)(a).

DONE and SIGNED
December 6, 2006

MICHELLE A. NORCROSS

Administrative Law Judge

CERTIFICATE OF SERVICE

i hereby certify that a true and correct copy of the above **** was served by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

DATED: _____

Court Clerk